

EXHIBIT 442

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL : MDL No. 2804
PRESCRIPTION OPIATE :
LITIGATION : Case No. 17-md-2804
:
APPLIES TO ALL CASES : Judge Dan Aaron Polster
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HIGHLY CONFIDENTIAL
SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

- - - -
DECEMBER 13, 2018
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VIDEOTAPED DEPOSITION OF HBC SERVICE COMPANY'S
DESIGNATED 30(B)(6) REPRESENTATIVE,
JAMES TSIPAKIS,
taken pursuant to notice, was held at Marcus & Shapira,
One Oxford Center, 35th Floor, Pittsburgh, Pennsylvania
15219, by and before Ann Medis, Registered Professional
Reporter and Notary Public in and for the Commonwealth
of Pennsylvania, on Thursday, December 13, 2018,
commencing at 9:09 a.m.

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GOLKOW LITIGATION SERVICES
877.370.3377 phone | 917.591.5672 fax
deps@golkow.com

1 Summit County, those two pharmacies would have the
2 exact same threshold for a particular product?

3 A. Yes. And as I mentioned, the threshold
4 was one component of the total system that we
5 used, but yes.

6 Q. Were these orders that showed up on the
7 threshold report, did they show up before or after
8 the order had been shipped to the pharmacy?

9 A. It would have been -- I believe it would
10 have been either in process of shipping or having
11 been shipped.

12 Q. The order wasn't blocked, it wasn't
13 stopped; correct?

14 A. The order wasn't blocked. However, in
15 our unique circumstance, the orders are going to
16 our own stores. If there's a reason for us to
17 intercept that order, quarantine that order, send
18 in loss prevention to pick up that order, we have
19 the ability to do that where a traditional
20 wholesaler does not.

21 Q. You keep talking about how you
22 distribute to your own stores and saying that
23 that's it makes unique. You've said that several
24 times now; right?

25 A. My testimony is not that we have any

1 different obligations under the law. What I'm
2 saying is we have different things at our disposal
3 that other traditional wholesalers do not.

4 Q. Well, you understand that a store like
5 Walgreens has a distribution facility that
6 distributes to itself?

7 A. Sure.

8 Q. CVS has a distribution facility that
9 distributes to itself?

10 A. Yes.

11 Q. Rite-Aid has a distribution facility
12 that distributes to itself?

13 A. Yes.

14 Q. Discount Drug Mart has a distribution
15 center that distributes to itself?

16 A. Yes.

17 Q. This is not a rare unique feature that's
18 unique to HBC or Giant Eagle, is it?

19 A. That's your opinion. To us that's a
20 difference than -- I guess I don't understand your
21 question.

22 Q. I guess my point is just because you
23 distribute to your own pharmacies doesn't mean
24 you're not obligated to abide by the federal laws
25 and regulations that all wholesale distributors

1 are subject to; correct?

2 A. I never said that we operated nor
3 followed the law any differently with our
4 responsibilities.

5 Q. I'm on No. 14. I'm going to show you
6 HBC 1032 which we're going to mark as Exhibit
7 No. 14 for today's deposition.

8 Is this an example of one of the threshold
9 reports that we've been talking about?

10 (HBC-Tsipakis Exhibit 14 was marked.)

11 THE WITNESS: In this format, I'm having
12 trouble figuring out what this is.

13 BY MR. GADDY:

14 Q. I'm giving it to you how it was given to
15 me. I was hoping you could kind of explain some
16 of it to me.

17 Do you recognize this as being one of the
18 threshold reports that we've been talking about?

19 A. I'm having difficulty. I'm trying to
20 understand what I'm looking at.

21 Q. Let's see if we can walk through it a
22 little bit. It looks like it was maybe a
23 spreadsheet. It looks like the left-hand column
24 is the pharmacy number?

25 A. Yes.

1 Q. Those numbers going down underneath
2 there, do those correspond with different Giant
3 Eagle stores?

4 A. It appears so, yes.

5 Q. I want to skip the vendor for a minute.
6 But the next one indicates month key, and it looks
7 like October of 2016 is the date of this report?

8 A. Yes.

9 Q. I couldn't see any way from this report
10 to determine when in October this report was run,
11 whether it was run on the 1st or the 15th or the
12 31st. Do you know if there's a way to determine
13 that?

14 A. Based on what I'm looking at, I agree.
15 I can't tell.

16 Q. The next column says, I guess, it's GPI
17 10?

18 A. Yes.

19 Q. Can you explain what that is?

20 A. Sure. The GPI is the GPI class of the
21 drug. I don't know which GPI -- this one, based
22 on what I'm reading here, I'm assuming this is
23 oxycodone, the GPI 10 for oxycodone.

24 Q. And you were just talking about the top
25 one on the list?

1 A. Yes.

2 Q. And the next one says it looks like the
3 Total Shipped Quantity. Do you see that?

4 A. Yes.

5 Q. And it lists the total shipped quantity
6 as 4500. And the next column says Threshold
7 Quantity. Do you see that?

8 A. Yes.

9 Q. And the threshold was 4200, so less than
10 the 4500; correct?

11 A. From what I'm reading, yes.

12 Q. And then at the next column, it has the
13 Product Name?

14 A. Yes.

15 Q. And then, finally, the column on the
16 right is the Schedule Number, and oxycodone
17 obviously is a Schedule II drug; correct?

18 A. Yes.

19 Q. Are you expecting there to be any
20 additional information on one of these threshold
21 reports?

22 A. Again, I haven't seen this in this
23 format. I'm sorry. I just really don't know what
24 I'm looking at here. I know that on the report
25 that the team would generate, it looked different

1 than this output. I read the columns with you
2 here, but I just don't know.

3 Q. Again, obviously, I don't work for Giant
4 Eagle or HBC, never have. I've never seen one of
5 your internally-generated threshold reports. This
6 is what was produced to us, and I was given a lot
7 of these. So I'm trying to figure out if there's
8 something else I should be looking at and there's
9 something else that maybe should be provided that
10 can give me a better understanding of the
11 threshold reports.

12 We just went through the information that's
13 included on what I was provided. Is there any
14 additional information on the reports that you're
15 used to looking at?

16 A. I don't know any other information.
17 Again I'd be speculating. It shows stores which I
18 recognize store numbers. It's showing total
19 shipped, threshold quantity, product name and
20 everything we just discussed. As far as how this
21 report was used and what native format it is -- I
22 do know things were things provided to you in
23 native format because some things were in the
24 system and they had do screenshots.

25 I honestly can't tell you exactly what this

1 is or how this was being used.

2 Q. But if you were to go back to your
3 office and asked to see the threshold report for
4 October 2016, do you think that that report would
5 have any additional information than what I have
6 right here in front of me?

7 A. I don't believe so.

8 Q. A couple questions about this. Number
9 one, you see the column, fourth column over is
10 Total Shipped Quantity; correct?

11 A. Yes.

12 Q. So you agree that even though the
13 quantity that was ordered exceeded the threshold
14 just for that first one, 4500 is over the 4200
15 threshold, that that quantity was shipped to the
16 store?

17 A. Again, I'm just going by what's on this
18 page. I don't know whether it was shipped or not.
19 I'm reading it like you.

20 Q. And it says it was shipped.

21 A. I'm reading that it says -- the title is
22 ETL Shipped Quantity, and it says 4500.

23 Q. And we know that this threshold -- first
24 off, we can look down and we see the first seven
25 or so entries are all for the same product;

1 correct?

2 A. Correct.

3 Q. And if we go to the far left-hand
4 column, we see that that's for seven or eight
5 different Giant Eagle stores; correct?

6 A. Yes.

7 Q. So all of these are Giant Eagle stores
8 that have exceeded their threshold for oxycodone
9 at whatever point in October this report was run;
10 correct?

11 A. Assuming we're looking at this right,
12 that this is what their published threshold
13 quantity was in that column, I'm following you.

14 Q. And we know that that threshold that was
15 set here in 2016, again the threshold was
16 identical for all these different pharmacies
17 regardless of where that pharmacy was located,
18 what that pharmacy's average sales were, what
19 their customer traffic were, the threshold was the
20 same for all of them; correct?

21 A. We went through how the threshold was
22 set earlier, yes. And then looking at this
23 report, a lot of the same numbers are in that
24 column.

25 Q. Well, just looking at the first drug,

1 the Oxydo, the threshold for every pharmacy is
2 4213.83; correct?

3 A. I'm sorry. Where are you at?

4 Q. The first seven entries, the
5 threshold --

6 A. Oh, 4213?

7 Q. Yeah.

8 A. Yeah, 4213.83.

9 Q. So even in October of 2016, the
10 thresholds were uniform across the entire chain of
11 Giant Eagle pharmacies?

12 A. Yes, it appears to be based on what I'm
13 reading here.

14 Q. And the last thing I had a question
15 about was the vendor is indicated as HBC. Do you
16 see that?

17 A. Yes.

18 Q. And the schedule, as you can see for the
19 Oxydo out to the right, is Schedule II; correct?

20 A. Yes.

21 Q. Did HBC ever have a license to
22 distribute Schedule II?

23 A. It never had a license nor did it ever
24 distribute Schedule IIs.

25 Q. Do you know why HBC is listed there?

1 A. I do not know why it's listed there.

2 I'm sure it's an IT thing, from a coding, but...

3 Q. I mean, in October of 2016, wouldn't
4 prescriptions to Giant Eagle be coming from the
5 new Giant Eagle RX distribution center?

6 A. As we established in 2016, all of the
7 drugs would be coming from the new distribution
8 center which did have a license for Schedule IIs.

9 Q. So you don't know why it says HBC here?

10 A. I do not.

11 Q. Go down about halfway through the page
12 and if you look to the right, it's probably the
13 easiest to find where I am, it starts saying
14 Co-Gesic. Do you see that?

15 A. Yes.

16 Q. And do you have an understanding of what
17 Co-Gesic is?

18 A. No.

19 Q. Do you have an understanding that it's
20 an oxycodone combination product?

21 A. I don't know what -- these are all
22 different generics, and they're all different
23 naming conventions. Based on this report, it's a
24 Schedule II. If you're asking me do I know what
25 Co-Gesic is exactly, I don't.

1 Q. You don't have an understanding that
2 Co-Gesic is a hydrocodone combination product?

3 A. Without looking it up, I don't.

4 Q. And the fact that it's a Schedule II
5 doesn't really mean much because this is after the
6 rescheduling happened in '14; correct?

7 A. Correct.

8 Q. So then what we're seeing for the rest
9 of this page here, for the entire second page and
10 then for the first third of the third page are
11 incidences where orders from Giant Eagle
12 pharmacies for Co-Gesic, which I'm going to
13 represent to you is a hydrocodone combination
14 product, are exceeding the threshold, which is
15 three times the monthly average for the last year.
16 Do you see that?

17 A. I'm seeing what's on this page. As far
18 as what their exact thresholds are, again, it's
19 listed as that on the top of the page. It would
20 appear as such, but without being able to validate
21 what I'm looking at or how I'm looking at this, I
22 can't answer with certainty.

23 Q. Well, according to what HBC has provided
24 us in this litigation, the threshold for this
25 hydrocodone combination product in October of 2010